

REMARKS

Claims 1-31 are pending. The applicants are electing group I, claims 1-21 with traverse.

The Restriction Requirement is unwarranted because the Examiner did not correctly support his assertion that the inventions of the claims of Groups I-II were independent or distinct. In particular:

1) the Examiner did not use the correct legal standard for determining whether the claims of Groups 1-II were independent or distinct;

2) there would be no serious burden for the Examiner to examine together all of the claims; and

The MPEP § 803 reports that there are two criteria for a proper requirement for restriction between patentably distinct inventions: (A) the inventions must be independent or distinct as claimed; and (B) there must be a serious burden on the examiner if restriction is required. Section 803 goes on to state that one way of showing such a serious burden on the examiner is by appropriate explanation of a different field of search.

The Examiner's reason for restricting the claims of Group I from the claims of Group II is unsupportable in view of the language of those claims. The Examiner indicated that "inventions II and I are related as a memory device including a memory array of phase change memory element and process made." That assertion is not correct because there is no claim in Group I that is directed to a "process made." Instead, claim 1 is directed to an electronic device and claim 15 is directed to a process of using an electronic device.

In addition, the Examiner incorrectly states that the inventions are distinct if it can be shown "1) that an electronic device including an element of chalcogenic material as claimed can be used to make other and materially different with a device or 2) that the memory device including a memory array of phase change memory element as claimed can be made by another and materially different with an electronic device (MPEP § 806.05(f))." That standard is irrelevant to Groups I and II because MPEP § 806.05(f) refers to a "product" and a "process for making a product" rather than an electronic device and a memory device. Unless the Examiner

can point to any claim that is directed to a “process of making a product,” the Examiner cannot rely on MPEP § 806.05(f) in support of the restriction requirement.

The applicants submit that claims 1 and 22 are not distinct under any standard. Claim 1 recites a device that includes chalcogenic element, a control circuit, and a temperature detection circuit. Claim 22 is almost identical in that it recites a memory array of plural chalcogenic elements, a control circuit, and a temperature detection circuit using substantially identical language to that of claim 1. The only real difference is that claim 1 recites a chalcogenic element and claim 22 recites an array of chalcogenic elements. There is no way that such similar claims could be distinct from one another with the meaning of 35 U.S.C. § 121.

For the foregoing reasons, the restriction requirement between claim Groups I and II is unwarranted.

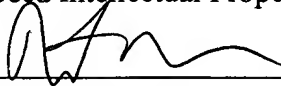
Although the claims of the groups I-II have been classified in different subclasses, there would be no serious burden for the Examiner to examine all of the claims together. In fact, because the language of each of the independent claims is so similar, it is difficult to imagine how one could perform a complete search for the claims of group I without performing a search for the claims of group II. For example, a proper search for the memory device of claim 22 would inherently turn up references for the electronic device with a claim 1 because both claims recite at least one chalcogenic element, a control circuit, and a temperature detection circuit. For the foregoing reasons, there would be no serious burden in examining together all of the claim groups.

For the foregoing reasons, the applicants submit that the Restriction Requirement is not proper and request that all of claims 1-31 be examined together.

The Director is authorized to charge any deficiency or credit any overpayment to our Deposit Account No. 19-1090.

Consideration of the pending claims is now requested.

Respectfully submitted,
Seed Intellectual Property Law Group PLLC



Robert Iannucci
Registration No. 33,514

Enclosure:
Postcard

701 Fifth Avenue, Suite 6300
Seattle, Washington 98104-7092
Phone: (206) 622-4900
Fax: (206) 682-6031
615559_1.DOC